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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. [redacted] 62

CHARLES B. MORRIS,

Appellant,

vs.

PAUL F. JONES, DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

STATEMENT AS TO JURISDICTION

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 961

PEOPLE EX REL. PAUL F. JONES, DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS,
(Petitioner) Appellee,

vs.

CHICAGO LLOYDS,
(Respondent) Appellee;

CHARLES B. MORRIS,
(Claimant) Appellant

JURISDICTIONAL STATEMENT

The following jurisdictional statement is herewith submitted, in accordance with Rule 12 of the Rules of the Supreme Court of the United States, in connection with the appeal taken in the above entitled cause, disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

The statutory provision and cases believed to sustain the jurisdiction of the Supreme Court of the United States is Section 344 (U. S. C. A.) Title 28 (Judicial Code, Sec. 237, Amended), providing:

"A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could

be had • • • where there is drawn in question the validity of a statute of any state, on the ground of its being repugnant to the constitution, treaties, or laws of the United States and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

Meyer v. *Fleming, et al., Trustees,* No. 392, October Term, 1945, decided 2-4-46;
Charleston, etc., Ass'n v. *Alderson,* Vol. 89, p. 621, Law Advance Opinions)Feb. 26, 1945);
Memphis, etc., Gas Co. v. *Beeler,* 315 U. S. 649;
John P. King Mfg. Co. v. *City Council of Augusta,* 277 U. S. 267;
Standard Scale Co. v. *Farrell,* 249 U. S. 571;
Williams v. *Bruffy,* 96 U. S. 716;
Zucht v. *King,* 260 U. S. 174;
Reinman v. *City of Little Rock,* 237 U. S. 171;
Atlantic Coast Line, etc. v. *City of Goldsboro,* 232 U. S. 548;
Bacon v. *Texas,* 163 U. S. 207.

By an act of Congress of January 31, 1928, C. 14, Par. 1, 45 Statutes at Large, p. 54, the word "appeal" was substituted for "writ of error."

In this said cause there is drawn in question the validity of Sections 187 (par. 799); 188 (par. 800); 189 (par. 801); 190 (par. 802); 191 (par. 803); 193 (par. 805); 194 (par. 806); 196 (par. 808); 208 (par. 820) of Chapter 73 Revised Statutes of Illinois, 1937, referred to in this record as the Insurance Code, the decision of the Supreme Court of Illinois (which is the Court of last resort in the State of Illinois) being in favor of their validity, and appellant having contended before said Court and before the lower court, the Superior Court of Cook County, Illinois, and at all stages of said proceedings in the Courts of Illinois, when the question arose, as disclosed by this record, and still contending in this Court that by the interpretation, con-

struction, application and effect given to said sections of the statutes of Illinois and by the decision of said Supreme Court of the State of Illinois, said statutory laws of the State of Illinois are repugnant to his constitutional rights as a citizen of the State of Missouri and of the United States, as guaranteed to him by the Constitution of the United States,

(1st) because the decision of the Supreme Court of the State of Illinois constitutes an act of the State Officers and Judges of the Courts of the State of Illinois in interpreting, construing, applying and enforcing said sections of the laws of the State of Illinois; and so interprets and gives effect to said laws as to abridge the privileges and immunities of the appellant, a citizen and resident of the State of Missouri and of the United States; and to deprive the appellant of his property without due process of law, and to deny to appellant the equal protection of the law as provided in the Fourteenth Amendment to the Constitution of the United States; and

(2nd) said decision of the Supreme Court of Illinois by its interpretation, construction, application and enforcement of said sections of the statutes of the State of Illinois, denies to appellant all benefit of Article IV, Section 1 of the Constitution of the United States, requiring that full faith and credit shall be given in each State to the public acts, records and judicial decisions, proceedings of every other state, and to the general laws enacted by Congress prescribing the manner in which such acts, records and proceedings shall be proven; and the effect thereof being that the decision of the Supreme Court of Illinois, by such an interpretation, construction, application and enforcement of said sections of the statutes of Illinois, denies to appellant, the holder of of a valid, final and unsatisfied judgment in his favor against respondent Chicago Lloyds, based upon a tort action that had accrued to him in October, 1932, and upon which he

had instituted and filed a suit for damages on August 24, 1934, against respondent Chicago Lloyds in the Circuit Court of the City of St. Louis, Missouri; and which suit was at issue and pending for trial on February 9th, 1938, when said liquidation proceeding was instituted in the Superior Court of Illinois; and in which suit said Missouri Court rendered judgment April 7, 1941—which Missouri Court when said suit was instituted August 24, 1934, and when it rendered judgment April 7, 1941, had jurisdiction of the subject matter of said cause and personal service upon respondent Chicago Lloyds, and which judgment was a general, final judgment upon which said Court of Missouri had duly ordered an execution to issue, and which execution was enforceable by general levy upon all of the property and assets of respondent Chicago Lloyds in the State of Missouri; and which judgment although duly authenticated, in accordance with and under the laws of the United States, appellant offered in evidence in support of his claim to participate pro rata in the assets of respondent Chicago Lloyds in the Court of Illinois where the assets of said respondent were being administered by a Statutory Liquidator in a statutory proceeding then pending and being prosecuted under said sections of the said Illinois laws; said lower Court, Superior Court of Cook County, Illinois, having refused to give said judgment any credit whatsoever, and having declined to receive said judgment in evidence in support of appellant's claim, and basing its said refusal upon an unconstitutional interpretation, construction, application and enforcement of said sections of the laws of Illinois; and dismissing appellant's claim as evidenced by said Missouri judgment, and said Supreme Court of Illinois on appeal affirmed the action of the said lower Court and the effect given said laws of the State of Illinois by said lower Court, and thereby denied to appellant the rights secured to him by said Article IV of the Constitution

of the United States and also Article VI, Section 1 of the Constitution, providing that the Constitution and laws of the United States which shall be made in pursuance thereof • • • shall be the supreme law of the land. The Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding; and also the Fourteenth Amendment to the Constitution of the United States, sections 1 and 2.

That in and by its said interpretation, construction and enforcement of said Section 191, which gives title to a Statutory Liquidator to the assets of an insurance company, said decision in effect interprets said Section 191 to grant exclusive jurisdiction to the Superior Court of Cook County to hear and determine all claims of creditors against the assets in the hands of said liquidator, and that said law requires all creditors to dismiss and abate all actions pending in the courts of sister States, and to present their claims to said Liquidator and there have been adjudicated on their merits; (note) Such an interpretation would have made available as a defense the two years Statute of Limitations of both Missouri and Illinois against all claims for false arrest and malicious prosecution which accrued in October of 1932); and further by the said interpretation and application said Supreme Court decided that the effect of vesting title in said Liquidator to the assets of respondent in this case was to abate said action pending in the Circuit Court of the City of St. Louis, State of Missouri, at the date of such vesting.

Further, in interpreting, construing and applying said Section 191 (Par. 203) said Supreme Court held that the effect thereof is to deprive the Courts of any sister State of the right, subsequent to February 9, 1938, to enter any judgment in a suit then pending, and for that reason refused to give such judgment full faith and credit under Article IV of the Constitution of the United States.

Further, said lower Court, Superior Court of Cook County, and said Supreme Court of the State of Illinois, in and by its decision and, notwithstanding both courts found that Chicago Lloyds was an unincorporated, voluntary association of individuals, nevertheless, in interpreting, construing, applying and enforcing said Section 196 of the Illinois Laws, treated said unincorporated association as if it were in fact a corporation organized and existing by virtue of the laws of Illinois; and also under the provisions of said Section 196 as if actually dissolved, notwithstanding the fact that said Section 196 expressly provides: "If the company against whom the petition for liquidation is filed be a corporation and the petition prays for dissolution of such company, the court shall have jurisdiction either before or after final liquidation of the property, business and affairs of such company, after service of an order to show cause, as aforesaid, and a full hearing, to enter a decree dissolving such company," and this record conclusively discloses that not only is "Chicago Lloyds" not an incorporated company, but that no such order was ever requested or entered as so required; and, in interpreting, construing and applying said Section 196, the Court expressly gave effect to a principle of law, that where a Court of the State creating a corporation, in a proper proceeding brought for the purpose of dissolving such company, and where a decree of dissolution has been entered dissolving such company, that a judgment taken against said corporation subsequent to the entry of such a dissolution order, without revival of the cause of action against the Receiver appointed by the Court in such dissolution proceeding, is null and void, and as if taken against a dead man. In applying said law, the Court has given effect to all of the legal consequences of such an order of dissolution, and also, notwithstanding the fact that the appellant's claim is based

upon a tort, and not upon any contractual relationship whatsoever to such corporation.

The said decision of such Court of Illinois, at page 32 thereof, uses the following language, showing clearly the above interpretation:

> "But since insurance companies are excluded from the operation of the National Bankruptcy Act, and one of the objects of the Illinois act liquidating insolvent insurance companies is to secure ratable distribution of its assets, we see no reason why the statute vesting a liquidator with title, should not receive the same construction as the Bankruptcy Act, which on adjudication of the bankrupt places title to all of the bankrupt's property, with actual or constructive possession, in a trustee, without regard to his location or place of adjudication. • • •
>
> "In view of the foregoing we hold that the Director of Insurance of the State of Illinois, as liquidator of Chicago Lloyds, upon the entry of the decree of the Superior court of Cook county of February 9, 1938, became vested with the title to all of its property, wherever situated, and that the courts of other States are required to recognize the rights of such liquidator, established by the judgment or decree authorized by the Illinois Statute for the liquidation of insolvent insurance companies. • • •
>
> "If it be assumed appellant had the right to proceed to trial and judgment in the circuit court of the city of St. Louis after the liquidator had been appointed and had taken possession of all of the property of Chicago Lloyds, still, if such judgment be allowed full faith and credit by the courts of Illinois, it does not necessarily mean such judgment is entitled to be collected out of the assets of Chicago Lloyds."

The statutes, the validity of which is involved, are as follows (Chap. 73, Art. XIII, Ill. R. S. 1937):

> "Section 187 (Par. 799) '*Scope of Article.*' This article shall apply to every company which is doing

or attempting to do, or which is representing that it is doing an insurance business in this State * * *."

"Section 188 (Par. 800) *Grounds for Rehabilitation and Liquidation of Domestic Company.* Whenever any domestic company

(a) is insolvent; or

(b) has refused to submit its books, * * * to the Director of Insurance * * *;

(c) has neglected or refused to observe an order of the Director to make good within the time prescribed by law any deficiency, whenever its capital, if a stock company, or its required surplus, if a company other than stock, shall have become impaired;"

Then follows subsection (d) relating to illegal transfer of its property;

(e) is found to be in such condition that its further transaction of business would be hazardous to its policyholders, or to its creditors, or to the public; or

(f) has violated its charter or any law of this State or its corporate powers; or

(g) that an officer has refused to be examined under oath touching its affairs;

(h) cannot meet the requirements for organization as required by law;

(i) has ceased to transact insurance business for one year;

(j) has commenced or attempted a voluntary liquidation or dissolution;

(k) is a party plaintiff or defendant in any proceeding for the appointment of a Receiver, custodian, liquidator or rehabilitator for such company;

(l) consents by a majority of its directors, stockholders or members; or

(m) has not organized and obtained a certificate authorizing it to commence the transaction of its business within the period of time prescribed by the sections of this Code, under which it is or proposes to be organized; or

(n) has refused or neglected to pay any valid final judgment in thirty days,

"Then the Director shall report any such case to the Attorney General of this State whose duty it shall be to apply forthwith * * * for an order to rehabilitate or liquidate—and for an order to show cause why an order to rehabilitate or liquidate should not be entered as provided by this article."

"Section 189 (Par. 801) *Injunction.* The court shall have jurisdiction, at any time after the filing of the petition to issue an injunction restraining such company and its officers, agents, directors, employees and all other persons from transacting any company business * * *. The Court may issue such other injunctions or enter such other orders as may be deemed necessary to prevent interference with the proceedings, or with the Director's possession and control or title, rights or interests as herein provided or to prevent interference with the conduct of the business by the Director, and may issue such other injunctions or enter such other orders as may be deemed necessary to prevent waste of assets or the obtaining of preferences, judgments, attachments or other like liens or the making of any levy against such company or its property and assets while in the possession and control of the Director."

"Section 190 (Par. 802) *Order of Rehabilitation or Liquidation.* On the return of such order to show cause and after a full hearing, which shall be held by the court without delay, the court shall enter an order either dismissing the petition or finding that sufficient cause exists for rehabilitation or liquidation and directing the Director to take possession of the property, business and affairs of such company and to rehabilitate or liquidate the same as the case may be. * * *"

"Section 191 (Par. 803) *Title to Property of Company.* The Director and his successor and successors in office shall be vested by operation of law with the title to all property, contracts and rights of action of the company as of the date of the order directing rehabilitation or liquidation. The filing or recording of such

order in the office of the Recorder of Deeds or the Registrar of Titles in any county of this State shall impart the same notice that a deed, bill of sale or other evidence of title duly filed for record by such company would have imparted."

"Section 193 (Par. 805) *Duties of Director as Liquidator—Sales—Notice to Creditors—Reinsurance.*" This section contains four subdivisions, the first providing "that upon the entry of an order directing liquidation the Director shall immediately proceed to liquidate the property, business and affairs of the company."; the second providing that "He may, subject to the approval of the Court, sell or otherwise dispose of the real and personal property * * *"; the third providing that "He shall as soon as may be conveniently possible, give notice to all creditors who may have claims against the company, as revealed by the records of the company, to present the same."; the fourth providing for reinsurance of policy risks.

"Section 194 (Par. 806) *Rights and Liabilities of Creditors Fixed upon Liquidation.* The rights and liabilities of the company and of its creditors, except those holding contingent claims, and of its policyholders, stockholders or members and of all other persons interested in its assets shall, unless otherwise ordered by the court, be fixed as of the date of the entry of the order directing liquidation. The rights of claimants holding contingent claims on said date shall be determined as hereinafter provided."

"Section 196 (Par. 808) *Order of Dissolution.* If the company against whom the petition for liquidation is filed be a corporation and the petition prays for dissolution of such company, the court shall have jurisdiction either before or after final liquidation of the property, business and affairs of such company, after service of an order to show cause as aforesaid and a full hearing, to enter a decree dissolving such company. The Court may likewise, regardless of whether an order of liquidation is sought or has been obtained, upon

proper petition by the Director, order dissolution of a company where it has failed to qualify for a certificate of authority authorizing it to commence the transaction of its business, or where a company has no assets and no means for payment of liabilities."

"Section 208 (Par. 820). *Time to File Claims Against Insolvent Company.* (1) If upon the entry of an order directing the liquidation of a domestic company, or at any time thereafter during such liquidation proceeding, such company shall not be solvent, the Court shall after such notice and hearing, as it deems proper, make an order declaring such company to be insolvent. Thereupon, regardless of any prior notice which may have been given to creditors, the Director shall notify all persons who may have claims against such company, as revealed by the records of the company, and who have not filed proper proofs thereof, to present the same to him at a place specified in such notice within such time as may be fixed by order of the court. The last day for the filing of proofs of claim shall be specified in the notice. Such notice shall be given in a manner determined by the court. The Director shall also cause a notice specifying the last day for the filing of claims to be published once each week for three successive weeks in a newspaper published in the county where such proceedings are pending, and in such other newspapers as he may deem advisable.

"(2) Proofs of claim on good cause shown may be filed subsequent to the date specified, but, no such claim shall share in the distribution of assets until all allowed claims, proofs of which have been filed before said date, have been paid in full."

Statement of the Facts

As shown by the record (R. 47), appellant filed his original claim for $100,000 September 21, 1938, in response to a notice from the Liquidator to file a verified

claim on or before November 15, 1938, wherein he stated that it was based upon a pending tort action against Chicago Lloyds in the Circuit Court of the City of St. Louis, Missouri, attaching to same a copy of the petition of appellant filed in said suit, and stating that when said case was tried and judgment entered that he would file a supplemental and amended claim (R. 14, 58). Thereafter, on August 2, 1941 (R. 23), appellant filed with said Liquidator said amended and supplemental claim for $50,000, based upon the Missouri judgment obtained on said petition, and attached thereto a duly authenticated copy of the said judgment and of the judgment roll in said cause.

Thereafter on June 10, 1942, the Liquidator, without notice and without any hearing whatsoever before him on said claim so reduced to judgment, filed in the said Superior Court of Cook County his report on claims, and recommended disallowance of appellant's claim and mailed a copy of his report to appellant, wherein he gave as a reason for his recommendation of disallowance that the judgment was obtained subsequent to the order of liquidation and in violation of an injunctive order entered in the case on February 9, 1938, and subsequent to the date set by the order of Court for filing of claims in the proceeding (R. 10).

Thereupon appellant filed his exceptions to said recommendation and report (R. 10-16), setting out that there had been no hearing upon the claim before the Liquidator; that said recommendation of disallowance was entirely "ex parte"; that said claimant's amended claim was properly filed; that the Liquidator had given an improper and unlawful extra-territorial effect to said injunctive order made by the Court; and had failed to find or state, or make known to the Court in his recommendations, that the claimant is and was a non-resident of Illinois and a citizen of St. Louis, Missouri, and had instituted a suit against Chicago Lloyds in the year 1934, long prior to the entry

of the decree directing liquidation; and that the said suit was pending and was being defended by Chicago Lloyds in the Circuit Court of St. Louis, Missouri, after service of process, and was also so pending at the time of the entry of the order directing liquidation, February 9, 1938; and that the Liquidator had failed to give the judgment of the Circuit Court of the City of St. Louis, State of Missouri, that full faith and credit to which it is entitled by reason of the provisions of Article IV, Section 1 of the Constitution of the United States, and further, that appellant had been denied as a citizen of the State of Missouri of the privileges and immunities of citizens of the State of Illinois, as guaranteed by Article IV, Section 2 of the Constitution of the United States; and that the Illinois Court had no right to enforce any law of the State of Illinois which abridged the privileges of claimant as a citizen of Missouri and of the United States, or to deny to him as such citizen of Missouri the equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution by Section 1 thereof; and further that he was entitled to the benefits and protection of Article VI of the Constitution of the United States, to the end that his claim may be adjudicated according to the provisions of the Constitution of the United States and the laws of the United States made under and pursuant thereof (R. 16).

Thereafter the Superior Court of Cook County appointed a Master to hear and consider said objections and exceptions and ordered him to file his recommendation and report to the Court (R. 17).

Appellant appeared before said Master and offered before said Master the said authenticated judgment and judgment roll of the Circuit Court of the City of St. Louis in favor of the claimant and against Chicago Lloyds for the sum of $50,000.00.

There was no evidence offered by the Liquidator tending to show that the appellant was a party to said liquidation proceedings wherein the decree of January 9, 1938 was entered; or that he was ever served with notice of said injunctive order, or that he had ever been cited and found guilty of contempt of said order. The only evidence offered by the Liquidator was the notice to appellant to file his claim with the Liquidator within the time fixed by the Court (R. 33, 57 and p. 16 of Additional Abstract) and the original claim filed by claimant in response to said notice and the amended claim filed on August 2, 1941 (R. 23), and two letters (R. 53, 59), one directed by the Judge of the Circuit Court of the City of St. Louis to the Liquidator, and the other an answer thereto by the Attorney for said Liquidator, both written before said final judgment for $50,000 was entered by said Circuit Court of the City of St. Louis, Missouri.

The Master found that, on February 9, 1938, the petition praying for an order that sufficient cause exists for liquidation of Chicago Lloyds, an unincorporated association of individuals transacting an insurance business in the State of Illinois and in other States, was filed (R. 18-20, 56); that it appears that a resolution was adopted by the Directors of Associated Underwriters, Inc., Attorney-in-Fact for Chicago Lloyds, consenting to the entry of such an order, and consenting to the liquidation of Chicago Lloyds by the Director of Insurance. A decree was entered on February 9, 1938, directing the Director of Insurance to take possession of the property of "Chicago Lloyds", and to liquidate the same in accordance with the terms of the Illinois Insurance Code (R. 20); that this decree contained an injunctive order, a portion of which the Master incorporated into his report (R. 21), which order among other things "restrained all persons from in any manner interfering with the possession of said Director of Insur-

ance, in or to the books, records or property of Chicago Lloyds, or with the liquidation of its business, until the further order of the Court; or from obtaining or attempting to obtain preferences, judgments, attachments or other like liens; and from making any levy against Chicago Lloyds, or its property, assets, books or records, while the same are in possession and control of the Liquidator."

The record discloses that at no time has appellant ever asked for any preference, lien or any position of advantage other than the right to share pro rata with the other general creditors, without any preference or priority whatsoever.

There is no finding by the Master that appellant was ever served with a copy of the injunction, or had any notice thereof. It was stipulated that the appellant received notice from the Liquidator to file a verified claim with the Liquidator (R. 33). (This notice is set out page 16 Additional Abstract; it contains no reference to any injunctive order.) In response to that notice, he filed his original and amended claim. There was no stipulation that appellant had notice of the injunction order, or any evidence whatever from which such notice could be deduced. Counsel for the Liquidator specifically reserved the right to produce evidence on that (R. 34), (Addn. Abs. p. 5), but produced none.

The facts as summarized by the Master from the evidence submitted, both oral and documentary, are set out in Record pages 18 to 24. On pages 24, 25 and 26 are set out the conclusions of law. Beginning on page 26 are set out his recommendations and a transcript of the proceedings and the evidence taken before the Master.

The Master in his "conclusions of law" (R. 24), finds that there is no dispute on any material fact in the matter involved in this reference and the only question

involved is a question of law, stated thus: "Had the liquidator of an insurance company, organized and doing business under the laws of Illinois, or the Court appointing him, the right to pass upon the merits or the amount of a claim, arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign court after such appointment."

The Master recommended (R. 26) that "the recommendation of liquidator that the claim be disallowed should be sustained and that claimant's objection to said recommendation be overruled and denied, unless claimant desires to establish his claim by other evidence under the direction of this court in this proceeding.

Objections (which by order of said Superior Court were to be treated as exceptions (R. 17)) were filed by appellant to the Master's Report (R. 34-40), wherein appellant excepted and objected to the said report for the reason that he had failed to give full faith and credit to said Missouri judgment duly and properly authenticated in support of plaintiff's claim, in violation of Section 1 of Article IV of the Constitution of the United States and the Acts of Congress passed in pursuance thereof, providing for full faith and credit to said Missouri judgment, and that to refuse to accord full faith and credit to said judgment is to deny appellant his rights under Section 2 of Article IV of the United States Constitution, and is a violation of Section 1 of Amendment XIV to the United States Constitution (R. 38).

The case was thereupon argued before the Superior Court of Cook County upon said exceptions (R. 24-40). The final order or decree confirming the Master's Report, with respect to the claim of Charles B. Morris, was entered September 28, 1944 (R. 61). The Court found (R. 61) "that the findings of the said Master in Chancery are

proper, true and correct, and that the objections to the Master's report filed by the claimant * * * (which were ordered to stand as exceptions before the Court), were properly overruled by the Master" (R. 61). "That the judgment in favor of Charles B. Morris in Case No. 206424 in the Circuit Court of the City of St. Louis, Missouri, has no force or binding effect upon Liquidator, and should not be considered in this liquidation proceedings." "The Morris has wholly failed and refused to proceed or to offer proof or evidence before the Court or the Master, other than the transcript of judgment entered in said case No. 206424 and the other evidence introduced by claimant as shown by the transcript of testimony filed with the Master's report, with respect to the liability or amount of damages of claimant against Chicago Lloyds."

The Court "Orders, adjudges and decrees: 1. That the exceptions of claimant to said Master's report are overruled and said report in all respects approved and confirmed. * * * 3. That said claim of Charles B. Morris is denied and disallowed; that his objections to the Liquidator's Tenth Report on Claims and his recommenration that said claim be disallowed are overruled, and said report on claims and the recommendations of disallowance of said claim is approved and confirmed, and said claim disallowed in accordance with the recommendations contained in the Master's report" (R. 61).

Thereafter the appellant duly prosecuted his appeal to the Supreme Court of Illinois, which was the Court that had jurisdiction (R. 64). Appellant filed his brief in said Supreme Court and therein (pp. 9-11) set out the several errors that he assigned for reversal, as required by the Civil Practice Act of Illinois and Rule 39 of said Supreme Court; and therein specifically contended that the interpretation, construction, application and effect given to the

injunctive statute, Section 189 of the laws of the State of Illinois, 1937, Chapter 73, referred to as the Illinois Insurance Code, and upon which said Superior Court had given extra-territorial effect to the said injunctive order entered February 9, 1938, is unconstitutional because there is and was no finding by the Master and no evidence whatever in the record, that appellant had been a party to said liquidation proceedings; or had been served with said injunctive order; or had any notice whatever thereof; or that the continued prosecution of said tort action in the Missouri Court would constitute a violation of said injunctive order; and that therefore to so apply said law as a ground and reason and as a penalty by refusing to give full faith and credit to said judgment, was arbitrary, erroneous and a complete denial and disregard of appellant's constitutional rights secured to him as a citizen of the State of Missouri and of the United States by Article IV, Sections 1 and 2; also Article VI; and the Fourteenth Amendment to the Constitution, thus depriving him of his property without due process of law and abridging his privileges and immunities and denying to him the equal protection of the law.

In answer to said original brief filed by appellant in said Supreme Court, the appellee filed a brief wherein for the first time, in addition to Section 189, the appellee contended that said Section 189 in connection with Sections 191, 193, and 196, when legally interpreted, construed, applied and given effect, justified the Supreme Court in affirming the judgment on the additional ground that notwithstanding respondent Chicago Lloyds was in fact a mere voluntary unincorporated association of individuals, transacting an insurance business in many other states of the Union including the State of Missouri, besides the State of Illinois, and, notwithstanding it was not in fact a corporation having a charter from the State of Illinois and created and existing by virtue of the laws of Illinois,

and also notwithstanding no petition had been filed or any order made in said statutory liquidating proceeding pronouncing Chicago Lloyds legally dissolved in conformity with Section 196, that nevertheless the legal effect of Chicago Lloyds being ordered liquidated under said Section 189, and the vesting of title to their assets and property in such statutory liquidator, was to abate any and all actions pending against said Chicago Lloyds in sister States and to completely dissolve said unincorporated association of individuals as an entity (pp. 6-11 of said brief are copied in this record certified to this Court); and further contending that the judgment rendered against said association Chicago Lloyds in said sister States subsequent to February 9, 1938, was therefore void and not entitled to the benefit of the full faith and credit clause of the Constitution of the United States, and that such an effect given to said Sections 189, 191, 193 and 196 would not constitute a violation of any of appellant's constitutional rights.

Thereafter appellant filed in said Supreme Court his reply brief, and on pages 25, 26 and 28, and in his summary on page 41 of said brief, met said new contentions and subsequently orally presented his said contentions without avail.

The errors summarized on page 14 hereof, are specifically set out on pages 9-11 of Appellant's original brief, as follows:

> "1. In finding or holding that the findings of the master are proper, true and correct and that the claimant's objections to the master's report were properly overruled; in overruling the claimant's exceptions to said report; and in approving said report.
>
> "2. In overruling the claimant's objections to the report of the liquidator on the claim based upon the Missouri judgment and to the recommendation of the liquidator that said claim be disallowed; in approving the liquidator's tenth report on claims in so far as it

recommended the disallowance of the claim on said Missouri judgment; and in disallowing said claim.

"3. In finding that the Missouri judgment in favor of claimant and against Chicago Lloyds, et al., has no force or binding effect upon the liquidator and should not be considered in the liquidation proceeding as evidence of the liability to claimant or of the amount of his claim; and in failing to hold that the liquidator was estopped by said judgment, and that it was res judicata and binding and conclusive evidence of the claim of appellant.

"4. In failing to hold that the Missouri judgment was entitled to full faith and credit under Section 1 of Article IV of the Constitution of the United States, the Act of Congress enacted May 26, 1790, and the decisions of the Supreme Court of the United States; and in failing to give full faith and credit to said judgment.

"5. In holding that the decree entered February 9, 1938, restrained claimant from prosecuting to judgment the action pending in Missouri.

"6. In failing to hold that the decree entered February 9, 1938, did not restrain claimant from prosecuting the action then pending in Missouri to judgment, for the reason that the Court did not have power or authority to restrain the claimant from prosecuting that action inasmuch as the judgment rendered therein would not be a lien upon the property in the possession of the liquidator.

"7. In failing to hold that the decree entered February 9, 1938, did not restrain the claimant from prosecuting the action then pending in Missouri to judgment, for the reason that the Court did not have jurisdiction over the claimant.

"8. In failing to hold that Section 189 of the Illinois Insurance Code (which the court below construed as warranting the entry of an injunction against a person not a party to the proceeding and not served with process or notice, and over whom the court below had no

jurisdiction, restraining him from prosecuting an action pending in a sister State, and as warranting on the strength of that injunction, the refusal to allow a claim, based on a judgment obtained in the sister State, to share in the property of Chicago Lloyds in the possession of the liquidator) is unconstitutional for the reasons (1) that, so construed, it is inconsistent with Section 1 of Amendment XIV of the Federal Constitution because it deprives the claimant of his property,—the right to prosecute the suit theretofore commenced in a sister State and the right to have his claim on a judgment rendered in his favor in that State allowed as a claim against Chicago Lloyds and entitled to share with other creditors in the assets of Chicago Lloyds—without due process of law; (2) that, so construed, it abridges the privileges and immunities of citizens of the United States, guaranteed by Section 2 of Article IV of the Federal Constitution, by denying to claimant the right to bring suit on the Missouri judgment to which Illinois, by Section 1 of Article IV, is required to give full faith and credit; (3) that so construed, it invades the privileges and immunities of claimant guaranteed by Section 1 of Amendment XIV to the Federal Constitution; and (4) that, so construed, it denies to claimant the equal protection of the laws guaranteed by that section.

"9. In failing to hold that the court could not give extra-territorial effect to the injunction entered February 9, 1938, by refusing to give full faith and credit to the judgment of Missouri."

The contentions of appellee, summarized on page 15 hereof, are specifically set out on pages 6 to 11 of Appellee's Brief as follows:

"A. Under Paragraph 803 of Chapter 73, the Liquidator is vested with title to all property, contracts and rights of action of the company as of the date of the liquidation order.

"B. Paragraph 806, Chapter 73, provides that the rights of all creditors shall be fixed as of the date of the order of liquidation unless otherwise ordered, and that order provided such rights were fixed as of noon on February 15, 1938 (Abs. 5).

"C. Paragraph 801, Chapter 73, provides for the issuance of an injunction (to prevent waste of assets or the obtaining of preferences, judgments, attachments or other like liens,' and such an injunction was issued (Abst. 6).

"When a state has adopted a policy governing the liquidation of insurance companies, that policy is binding upon creditors wherever they may be located. A judgment taken against the insolvent subsequent to the date of the entry of the liquidation order is not entitled to recognition in the liquidation proceeding. (Citing cases.)

"All parties, whether policyholders or creditors, dealing with an Illinois insurance company have presumptive knowledge of its charter provisions and the statutory law governing its liquidation. (Citing cases.)

"The laws of Illinois governing the liquidation of insurance companies and judicial proceedings thereunder are entitled to full faith and credit in the courts of sister states. (Citing cases.)

"A corporation carries with it all charter provisions governing it into each state in which it carries on business, and all parties doing business with it are presumed to know the law governing it and are bound thereby. (Citing cases.)

"B. The general rule in a statutory liquidation proceedings where a statutory liquidator is vested with title is that judgments taken against the insolvent company, subsequent to the entry of the liquidation order, are not provable in the liquidation proceedings. (Citing cases.)

"Judgments taken against an insolvent insurance company, subsequent to the order of dissolution, are subject to collateral attack in the liquidation proceedings." (Citing cases.)

Pages 25, 26 and 28, and the summary on page 41 of appellant's reply brief, referred to on page 16 hereof, are as follows:

"He relies principally upon Section 191 of the Code (Ill. Rev. Stat., Chap. 73, Sec. 803), which provides that title to the property of a company in liquidation is vested in the Director (Brief, p. 28). Cases involving corporations are cited for the proposition that the title vested in the Director is recognized in other jurisdictions. The reasoning upon which the decisions in those cases rests is that a State, which has created a corporation, may say who the agents of that corporation are to be in case its charter is forfeited. (See quotation from Relfe v. Rundle, on pages 32 and 33 of the brief of appellee.) That reasoning is not applicable to associations which are not created by a State. Chicago Lloyds received no charter from the State of Illinois. (Roach & Co. v. Harding, 348 Ill. 454, 464; 7 C. J. S. "Associations" 19, 21.) It was formed by act of its members, many of whom are residents of States other than Illinois. (Claimants' Exs. Nos. 15 and 16.) It transacted business in Illinois. It also transacted business in Missouri, and it may have done so in other States. If an association owns property located in more than one State, which of the States has the power of designating the 'agent' (if he can be called an agent of the association) to liquidate all its property wherever located? A corporation, which is created by the laws of one of the States, carries its charter and the laws of the State of its creation governing it into other States in which it transacts business, and so the State of incorporation may designate the liquidating agent. An association has no charter to carry. Chicago Lloyds has no charter into which Section 191 of the Code can be read. Consequently, the theory whereunder a statutory liquidator of a corporation succeeds to the title to its property located in another State does not apply to an association." (Reply Brief pp. 25, 26.)

"At this point in his argument the Director has injected a new contention, not against the provability of the judgment, but against its validity. He argues that the judgment is invalid because the laws of Illinois are entitled to full faith and credit in Missouri and that under the full faith and credit clause the Missouri court 'should have refused to enter judgment against Chicago Lloyds' (Brief, p. 35). He forgets that, but a few pages before, he argued that a State is not required to give faith and credit to the statutes of sister States (Brief, pp. 19-26). Surely, the courts of one State are not to be ousted of their jurisdiction by legislation of another." • • • (Reply Br. p. 28).

"A. Chicago Lloyds continued to remain capable of being sued despite the entry of the order that the Director take possession of and liquidate its property and a judgment rendered after the entry of such an order is not void.

"B. Chicago Lloyds continued to remain capable of being sued after its certificate of authority to transact business in Illinois expired, even assuming that that certificate was not renewed.

"C. Illinois is required to give full faith and credit to the Missouri judgment.

"The fact that the liquidation proceeding here is statutory does not confer exclusive jurisdiction to liquidate claims upon the supervising court or warrant that court in disallowing claims on judgments rendered by competent courts of sister States after the entry of the order of liquidation, where the company is an association which has not been dissolved.

"A. Assuming that the Director of Insurance of the State of Illinois became vested with title to all property of Chicago Lloyds, it does not follow, as an incident of that title, that claims against it may not be liquidated in competent courts of sister States.

"B. Assuming that the claimant is presumed to know that any claim he might have against Chicago Lloyds

would be 'dealt with' in accordance with the provisions of the statutes of Illinois, it does not follow that claims against Chicago Lloyds may not be liquidated in competent courts of sister States" (Reply Br. pp. 41, 42).

The Supreme Court affirmed the judgment of the lower Superior Court of Cook County, and in and by its opinion discloses clearly that it adopted said contentions of appellee; and by so interpreting, construing, applying and giving effect to said sections of said Illinois law, it wrote an opinion thus justifying the violation of appellant's constitutional rights (as we have heretofore quoted on page 6 of this jurisdictional statement), filing and entering said opinion September 19, 1945.

Thereafter and within the time provided by the Rules of said Supreme Court, appellant filed a petition for rehearing of said cause, wherein he specifically directed the attention of the Court to said erroneous interpretation, application and effect that it had given to said Illinois statutes and that by such effect all of appellant's constitutional rights had been disregarded and denied, which said petition for rehearing was overruled and denied on the 19th day of November, 1945. Thereafter said original opinion was modified in certain other respects by order of the Court and entered on November 26, 1945.

The questions involved herein are substantial because they involve substantial rights of the appellant herein set out and involve a principle that is far reaching and of great importance and interest all over the United States and will decide a question that is bound to arise again and again and is bound to come before the Supreme Court of the United States.

The Supreme Court of Illinois found that the Supreme Court of the United States has never passed on the question, and that the issues presented "a new application of the full-

faith-and-credit clause, which is still debatable, or at least questionable. * * * These questions, as presented, we believe have never been decided by the United States Supreme Court as the final arbitrator of such questions arising under the full-faith-and-credit clause."

Thus, it will be seen that numerous property rights and numerous constitutional questions are bound to arise out of similar situations under the full-faith-and-credit clause of the Federal Constitution and the due process clause of the Constitution, as hereinabove set out.

The decision of this Court will determine whether or not one State can so legislate as to deprive citizens of other States of personal as well as property rights, and whether such legislation can have extra-territorial effect, so that the issue involved is far reaching and of great national importance.

There is appended hereto the opinion of the Supreme Court of Illinois delivered upon the rendition of the judgment sought to be reviewed, together with the amendment made by the said Supreme Court on November 26th, 1945.

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APPENDIX

Opinion

SUPREME COURT OF ILLINOIS, UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss!

At a Term of the Supreme Court, begun and held in Springfield on Monday the 10th day of September in the year of our Lord, one thousand nine hundred and thirty-five, within and for the State of Illinois.

Present: Charles H. Thompson, Chief Justice; Justice Clyde E. Stone, Justice Walter T. Gunn, Justice June C. Smith, Justice Francis S. Wilson, Justice Loren E. Murphy, Justice William J. Fulton; George F. Barrett, Attorney General; Harry G. Newman, Marshal.

Attest: Earle Benjamin Searcy, Clerk.

Be it Remembered, that afterwards, to-wit, on the 19th day of September, 1945, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

No. 28664

PEOPLE ex Rel. PAUL F. JONES, Director, etc., et al.,
Appellees,

vs.

CHARLES B. MORRIS, *Appellant*

Appeal from Superior Court, Cook County

Earl Benjamin Searcy, Clerk of Supreme Court, State of Illinois

Docket No. 28664—Agenda 25—May, 1945.

The People ex rel. Paul F. Jones, Director of Insurance, Appellee, v. *Chicago Lloyds et al.—(Charles B. Morris, Appellant.)*

MR. JUSTICE GUNN delivered the opinion of the court:

The controversy in this case arises out of the disallowance of a claim of Charles B. Morris, appellant, by the

Director of Insurance of Illinois, the liquidator of Chicago Lloyds, hereinafter referred to as "liquidator," appointed by the decree of the superior court of Cook county upon the petition of the Director of Insurance and the Attorney General of the State of Illinois.

As finally amended appellant's claim consists of a judgment rendered in the circuit court of the city of St. Louis, Missouri, against Chicago Lloyds, three years after the liquidator of Chicago Lloyds had been confirmed by the decree of the superior court. The claimant contended the full-faith-and-credit clause of the constitution of the United States (art. IV, sec. 1), and the acts of Congress enacted pursuant thereto, required that such judgment be recognized in the Illinois liquidation proceeding and allowed as a claim against the assets of Chicago Lloyds for the full amount of such judgment.

Appellant's claim involves a construction of the constitution of the United States, and authorizes a direct appeal to this court. *Groome* v. *Freyn Engineering Co.* 374 Ill. 113; *VanDyke* v. *Illinois Commercial Men's Ass'n.* 358 Ill. 458.

Many of the questions arising under this provision of the United States constitution have been so thoroughly settled that as to such questions an appeal to this court would not be entertained, because the question involved is no longer debatable, and we do not entertain appears when the constitutional question is settled so as to be no longer debatable. *First Nat. Bank* v. *Village of South Pekin*, 371 Ill. 605; *Dean* v. *Board of Education*, 386 Ill. 156; *Wilson* v. *Prochnow*, 354 Ill. 98.

The question here presented, as set out in the report of the master, is as follows: "Had the liquidator of an insurance company, organized and doing business under the laws of Illinois, or the court appointing him, the right to pass upon the merits or the amount of a claim, arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign court after such appointment?" This presents a new application of the full-faith-and-credit clause, which is still debatable, or at least questionable, and therefore is subject to review by this court on direct appeal

from the superior court of Cook County. (*Atkins* v. *Atkins*, 386 Ill. 345.) Incidentally the question is also in the case under such clause of the constitution as to what effect the prior decree of the Illinois court, appointing a liquidator for Chicago Lloyds, has upon a subsequent judgment rendered in another State seeking satisfaction from the same assets. These questions, as presented, we believe have never been decided by the United States Supreme Court as the final arbitrator of such questions arising under the full-faith-and-credit clause.

The facts as applicable to the questions involved are comparatively simple. Chicago Lloyds, an unincorporated association recognized and authorized by the laws of Illinois to transact insurance business in Illinois, and in other States, upon compliance with the laws of such other States, obtained a license to transact business in the State of Missouri March 1, 1932, and continued to have such authority for some years thereafter. Associated Underwriters, Inc., was the attorney in fact for Chicago Lloyds in said State, and one Roessel was attorney for Chicago Lloyds, and its agent. The claimant, Charles B. Morris, became the agent handling such business in Missouri, under a contract. A dispute arose as to whether he had accounted for all premiums paid to him, which resulted in his being arrested upon the complaint of Roessel, charged with embezzlement, and was indicted, tried and acquitted.

August 24, 1934, Morris brought suit in the circuit court of the city of St. Louis against Chicago Lloyds, Associated Underwriters, Inc., and attorney Roessel, for malicious prosecution and false arrest. The cause was removed to the United States court, and afterwards, January 7, 1938, remanded to the circuit court of the city of St. Louis. February 9, 1938, the People of the State of Illinois, upon the relation of the Director of Insurance, filed in the superior court of Cook county a petition praying for the entry of an order finding sufficient cause existed for the liquidation of Chicago Lloyds, and on the same day a decree was entered adjudging and decreeing that the Director of Insurance take possession of its property, and liquidate the same in accordance with the Illinois Insurance Code. February 15, 1938, an order fixing the time and procedure for

the filing of claims was made, requiring claims to be presented to the liquidator on or before November 15, 1938.

Before the liquidation proceeding Chicago Lloyds had questioned the jurisdiction of the circuit court of the city of St. Louis by a plea and demurrer which were overruled, and later filed an answer on the merits, as did also Associated Underwriters, Inc. After the order of the superior court of Cook county appointing a liquidator was entered, an injunction was issued restraining the claimant and others from prosecuting claims (of which claimant concedes he had notice), and counsel for Chicago Lloyds, upon the requirement of the liquidator, withdrew, and the St. Louis court was advised that the reason of such action was the liquidation proceedings in Illinois, with the consequent vesting of the title to all of the property and assets of Chicago Lloyds in the liquidator. Nevertheless, the claimant persisted in prosecuting his suit at law in the circuit court of the city of St. Louis, and April 7, 1941, such court entered a judgment in favor of the claimant against Chicago Lloyds and others in the amount of $50,000.

September 21, 1938, before obtaining judgment Morris filed his claim with the liquidator in the amount of $100,000, claiming damages for false imprisonment and malicious prosecution, and attached as an exhibit the complaint filed in the circuit court of the city of St. Louis. After he had obtained judgment he amended his claim by filing an exemplified copy of the judgment rendered by the circuit court of the city of St. Louis. The amended claims shows it arose from the same state of facts as the original. The only evidence presented by claimant was the record of this judgment, and no attempt made to establish and prove a contingent claim, as provided by section 309, subsection 3, of the Illinois Insurance Code, discussed later in the opinion.

In disposing of the issues presented and argued in this case it is first necessary to examine the status, rights and title of the liquidator of the insolvent insurance company under the laws of the State of Illinois. Article XIII of "An Act to revise the law relating to insurance," referred to as the Insurance Code, (Ill. Rev. Stat., 1943, chap. 73, pars. 799, et seq.,) among other things provides for the

liquidation of insolvent insurance companies. Section 188 of the Insurance Code, (Ill. Rev. Stat. 1943, chap. 73, par. 800,) specifies the grounds upon which the Director of Insurance and the Attorney General may petition a circuit or superior court for an order to show cause why an insurance company should not be liquidated. Section 189, (par. 801,) of the Insurance Code provides the court may issue an injunction to protect the assets of such insolvent company. Section 190 (par. 802) provides, upon full hearing, the court may enter an order either to dismiss the proceeding, or find cause exists, and order the Director of Insurance to take possession of the property, business, assets, and affairs of said insolvent insurance company, and liquidate them according to law. Section 191 (par. 803) provides that the Director, as liquidator, is vested by law with title to the property, contracts and right of such insolvent insurance company, as of the date of the order entered by the court. Section 193, (par. 805,) fixes the duties of the liquidator. Section 194, (par. 806,) provides that creditors, except those holding contingent claims, shall, unless otherwise ordered by the court, be fixed as of the date of the entry of the order directing liquidation. Section 208, (par. 820,) directs the manner of fixing the time to file claims, after an order has been entered declaring the company insolvent. Section 209, subsection (3,) (par. 821) provides how and under what conditions a contingent claim may be allowed, with a limitation that the claim must become absolute against the company on or before the last day fixed for filing the proofs.

Under the provisions of a prior law, (Ill. Rev. Stat. 1935, chap. 73, par. 105(4),) which is almost identical with section 191, we have held that the title of a liquidator of an insolvent insurance company is different from that of a receiver in chancery, who is limited to the territorial jurisdiction of the court appointing him, but, on the contrary, vests in the liquidator the title to all of the property of an insolvent insurance company. *People ex rel. Palmer* v. *Nichaus*, 356 Ill. 104; *National Bondholders Corporation* v. *Joyce*, 258 N. Y. 257, 11 N. E. 2d 552.

The pioneer case making this distinction between the title of a liquidator appointed under a special statute,

and that of a receiver, is *Relf* vs. *Rundle*, 103 U. S. 222, 26 L. ed. 337, where the distinction between possession of a receiver and the title of a State officer, vested with title of assets of an insolvent corporation, was first discussed with like results. The title of such a liquidator reaches all of the assets of the company, including those in other States; (*Relf* v. *Rundle*, 103 U. S. 222, 26 L. ed. 337; *Converse* v. *Hamilton*, 224 U. S. 243, 56 L. ed. 749;) and the title of such a liquidator must be recognized by the courts of other states. *Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.

At least twenty States, including Missouri, have enacted statutes vesting title to the property of an insolvent corporation in the liquidator appointed to take charge of its property, and the Supreme Court of Missouri has given, to a statute similar to section 191, (Mo. Rev. Stat. 1929, sec. 5947,) the construction we have given in the *Niehaus* case. (*McDonald* v. *Pacific States Life Ins. Co.*, 343 Mo. 1232, 124 S. W. 2d 1157). In this case the title of a liquidator appointed in Colorado was held superior to a later judgment in Missouri, levied on Missouri real estate.

The title of such a liquidator has been compared to that of a trustee under a general deed of assignment. (*Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.) But since insurance companies are excluded from the operation of the National Bankruptcy Act, and one of the objects of the Illinois act liquidating insolvent insurance companies is to secure ratable distribution of its assets, we see no reason why the statute vesting a liquidator with title should not receive the same construction as the Bankruptcy Act, which on adjudication of the bankrupt places title to all of the bankrupt's property, with actual or constructive possession, in a trustee, without regard to his location or place of adjudication. *Isaacs* v. *Hobbs Tie & Timber Co.* 282 U. S. 734 75 L. ed. 645.

In view of the foregoing we hold that the Director of Insurance of the State of Illinois, as liquidator of Chicago Lloyds, upon the entry of the decree of the superior court of Cook county of February 9, 1938, became vested with the title to all of its property, wherever situated, and that

the courts of other States are required to recognize the rights of such liquidator, established by the judgment or decree authorized by the Illinois statute for the liquidation of insolvent insurance companies.

Appellant claims that notwithstanding the property and assets of Chicago Lloyds vested in the liquidator, the full-faith-and-credit clause of the United States constitution, and the statutes enacted pursuant thereto, require the judgment rendered three years later, in the circuit court of the city of St. Louis, against Chicago Lloyds be allowed for the full amount, as a valid claim against the assets in possession of such liquidator.

If it be assumed appellant had the right to proceed to trial and judgment in the circuit court of the city of St. Louis after the liquidator had been appointed and had taken possession of all of the property of Chicago Lloyds, still, if such judgment be allowed full faith and credit by the courts of Illinois, it does not necessarily mean such judgment is entitled to be collected out of the assets of Chicago Lloyds.

The construction and interpretation of the full-faith-and-credit clause has been the subject of much controversy and difficulty, and in some cases reaching results which are apparently contradictory. No rule can be laid down which will fit all cases. In the simple instance of a judgment for debt against a person or corporation, where collection is sought in another State, with no complications involving insolvency, conflict of law, questions of jurisdiction, or offending State policies, little difficulty is had in applying the case of *Mills* v. *Duryee*, 7 Cranch, 481, 3 L. ed. 411, that a judgment have the same faith and credit in another State that it had in the State of its rendition. This case was decided in 1813, but since that time the United States Supreme Court has held there were exceptions to the rule first announced, because of the complex nature of the Federal union and the necessity of preserving the sovereignty and policies of the several States by refraining from imposing upon them the laws of another State under the guise of the full-faith-and-credit clause.

From the cases a general pattern may be discovered controlling the several different classes of cases in which

full faith is required, and those which are regarded as exceptions to the rule. Upon examination we find that the application of the full-faith-and-credit clause is particularly favored when applied to the enforcement of judgments of another state, as distinguished from statutes and other public acts. (*Williams* v. *North Carolina*, 317 U. S. 287, 87 L. ed. 279.) Doubtless because this provision is supposed to have been a part of the constitution to give effect to the general rule of res judicata. (*Magnolia Petroleum Corp.* v. *Hunt*, 320 U. S. 438, 88 L. ed. 149.) So when the same proposition of enforcing a judgment for money in one State is presented, and there is no question of exception to the rule arising, the rule of *Mills* v. *Duryee*, 7 Cranch, 481, 3 L. ed. 411, is easy to apply.

The first class of cases comprise those where full faith is required. In divorce matters the decree of another State is entitled to full faith and credit, where the jurisdiction of the trial court is not questioned. (*Williams* v. *North Carolina*, 317 U. S. 287, 87 L. ed. 279.) This is but an application of the well-settled rule that when full faith and credit is sought the jurisdiction of the court rendering the judgment is always open to inquiry. (*Pendleton* v. *Russell*, 144 U. S. 640, 36 L. ed. 574.) So also, a judgment for money rendered in one State is enforcible in another although in the latter it would be regarded as a gambling debt and unenforcible. (*Flauntleroy* v. *Lum*, 210 U. S. 230, 52 L. ed. 1039.) In *Milwaukee Co.* v. *M. E. White Co.*, 296 U. S. 268, 80 L. ed. 220, a judgment for taxes rendered in Wisconsin was enforced against the defendant in the State of Illinois. And in *Yarborough* v. *Yarborough*, 290 U. S. 202, 78 L. ed. 269, it is held that support money awarded a child by a decree of court in a divorce proceeding between the father and mother is not subject to being enlarged or increased in another State, where the decree is pleaded in bar, even though the child was not a party to the proceeding. And similarly, the full-faith-and-credit clause applies to an unalterable decree of alimony of a divorced wife. (*Sistare* v. *Sistare*, 218 U. S. 1, 54 L. Ed. 905.) It is to be observed in all of the cases just cited there was a judgment or decree for money against the defendant, which was held binding in

another State, whether urged for collection or defensive purposes.

A second class of cases, where full faith and credit have been denied, cover a wide field. It is a general rule that the courts of no country execute the penal laws of another; (*The Antelope*, 25 U. S. 10), and, hence, full faith and credit has been denied a judgment for a penalty obtained by a State against an insurance company (*State of Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 32 L. ed. 239), followed in *Huntington* v. *Attrill*, 146 U. S. 657, 36 L. ed. 1123, where the nature of the penalty is exhaustively treated. So, where the only remedy to collect an assessment against the stockholder of a corporation is at the suit of a *creditor*, denying full faith and credit to a judgment obtained by a receiver against a stockholder does not offend the constitution. *Finney* v. *Guy*, 189 U. S. 335, 47 L. ed. 839.

Also where the New York Code provided a foreign corporation could not maintain a suit unless the cause of action arose in the State, full faith and credit was not denied where the New York court refused to recognize an Illinois judgment in favor of a foreign corporation, where the action did not arise in the State of New York. (*Anglo-American Provision Co.* v. *Davis Production Co.*, 191 U. S. 373, 48 L. ed. 225.) The reason given is that the requirement that the action arise in New York goes to the jurisdiction of the New York court, and such jurisdiction is not afforded by the full-faith-and-credit clause. Likewise, a judgment against an insurance company on a policy, enforcible because the beneficiary has an insurable interest in the State where the contract is made, may not be enforcible in another State where the same interest of the beneficiary is held not to be an insurable one. *Griffin* v. *McCoach, Trustee*, 313 U. S. 498, 85 L. ed. 1481.

The nature of a case as constituting a cause of action in the several States is not changed by the fact that it is reduced to judgment. (*Huntington* v. *Attrill*, 146 U. S. 657, 36 L. ed. 1123.) However, it must be observed that a State may not, under the guise of denying a remedy, refuse, under the full-faith-and-credit clause, claims otherwise capable of being enforced in such other State. *Broderick* v. *Rosner*, 294 U. S. 629, 79 L. ed. 1100.

This second type of cases represents a class which, if originally brought in the State in which enforcement of the judgment is sought, could not have been maintained, and are therefore not made valid by a judgment elsewhere. Two of these cases, the *Finney and Anglo-American cases* are to be distinguished from the first class above discussed only because jurisdiction is lacking to afford a remedy, and not because of a mere difference between the States as to what amounts to a cause of action.

A third class of cases arises when the judgment or decree sought to be enforced will, if enforced, require the application of a different law to property, or the right to take property, from that of the State in which it is sought to be enforced. So, the construction of a will involving real estate (*Clarke* v. *Clarke*, 178 U. S. 186, 44 L. ed. 1028); a judgment determining legitimacy of children, (*Olmsted* v. *Olmsted*, 216 U. S. [illegible] ed. 530); or the manner of adoption of children (*Wood* v. *McGehee*, 237 U. S. 611, 59 L. ed. 1144); or the capacity of a lunatic (*Gasquet* v. *Fenner*, 247 U. S. 16, 62 L. ed. 956); and the interpretation of contracts (*Pink* v. *A. A. A. Highway Express, Inc.*, 314 U. S. 201, 86 L. ed. 152), are all instances in which the judgment of one State is unenforcible in another State under the full-faith-and-credit clause, if opposed to the law of the latter.

In recent years there has been a trend towards yet another class of cases involving full faith. Where a party has an option to proceed under the laws of one of two or more States having similar laws, as in compensation cases, where the liability may be enforced either where the contract of employment is made, or where the injury occurs; and cases involving the liquidation of corporations, where they acquire title to the property by the judgment and laws of one State but have property in another which is subject to preferences which may be created by the State law of the latter. In *Pacific Employers Ins. Co.* v. *Industrial Accident Com. of Calif.*, 306 U. S. 493, 83 L. ed. 940, it is said: "It has often been recognized by this Court that there are some limitations upon the extent to which a state may be required by the full faith and credit clause to enforce

even the judgment of another state in contravention of its own statutes or policy. * * * The very nature of the federal union of states, to which are reserved some of the attributes of sovereignty, precludes resort to the full faith and credit clause as the means for compelling a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." Having this in mind the court held, in compensation cases, where each State had a compensation law, it would be lawful for a State to adopt or enforce the remedy of another, or follow its own. There an employee residing in Massachusetts, becoming employed in that State by a Massachusetts employer, and injured in the course of his employment in the State of California, was sustained in having compensation awarded under the California law.

In *Alaska Packers Ass'n.* v. *Industrial Accident Com. of California,* 294 U. S. 532, 79 L. ed. 1044, an employee made his contract in the State of California, and by agreement with his employer to be transferred there and back, went to Alaska, where he was injured. Upon return to California he brought proceedings for compensation under the California law, which was allowed and sustained notwithstanding claim that the Alaska compensation law should control. In *Magnolia Petroleum Co.* v. *Hunt,* 320 U. S. 430, 88 L. ed. 149, the plaintiff was a resident of Louisiana, and was employed in that State. In the course of his employment he went to the State of Texas, and was injured, and claimed and was allowed compensation under the Texas law. He then went back to Louisiana, the State where the contract was made, and filed another claim for compensation under the Louisiana law. The defendant pleased res judicata under the Texas law, and the award in plaintiff's favor was reversed by the United States Supreme Court.

These three cases illustrate the proposition that a State may adopt and enforce the compensation laws of another, or may enforce its own laws in spite of the contract of employment being made in another State, but when it does take jurisdiction, and makes an award, there cannot be another award in another State, notwithstanding the latter has a separate statute upon the subject, which would be

available to the claimant had he not otherwise proceeded under the laws of another State. The result is analogous to that resulting from taking possession of the *res*—viz., the Court first obtaining possession may not be disturbed by actions of other courts having concurrent jurisdiction.

In the matter of liquidation of corporations it has been frequently held that a receiver has no power beyond the jurisdiction of the court appointing him, and consequently his possession or title does not bind the courts of another State. In the case, however, of laws which vest title of an insolvent corporation in a liquidating officer, it has been determined that such law is a part of the corporation's charter and follows it to wherever it is authorized to transact business, and therefore, if by the law of its origin a liquidator acquires title, then such title must be recognized in all other States. (*Relf* v. *Rundle*, 103 U. S. 222, 26 L. ed 337; *Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.) In such case it is also competent for a State to adopt the policy of giving preference to resident creditors, where there is property of the insolvent corporation within the State. (*Clark* v. *Williard*, 294 U. S. 211, 79 L. ed. 865.) But, if there are no such creditors then a judgment rendered in another State than that of the residence of the liquidator is entitled to the same force and effect as in the State where it was rendered. It is open to the same attack, and subject to the same defenses. (*Robertson* v. *Pickrell*, 109 U. S. 608, 27 L. ed. 1049.) The tendency of most of the States is to give priority to the title of the liquidator unless a contrary policy is expressed. (*Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.) Missouri has not expressed such a policy, but, as pointed out later, follows the majority rule.

No case has been called to our attention which gives to the judgments of one State the force and effect that it has therein as against a prior judgment in another State, under which possession of property has been taken by the officer of the latter court. In such instances the rule seems to be uniform that the court which first acquires jurisdiction over the res is entitled to retain it and dispose of it in accordance with the law and processes of its jurisdiction. *Harkin* v. *Brundage*, 276 U. S. 36, 72 L. ed. 457; *Penn Gen-*

eral Casualty Co. v. *Pennsylvania*, 294 U. S. 189, 79 L. ed. 850.

From these applications of full faith and credit we are required to ascertain the principle controlling this case. Illinois has a liquidation law which requires title to the assets of an insolvent insurance company to vest in a liquidator. (Ill. Rev. Stat. 1943, chap. 73, par. 803.) Such a statute is valid. (*People* v. *Niehaus*, 356 Ill. 104.) Missouri has a similar statute, which has been construed substantially the same as that of Illinois. (*McDonald* v. *Pacific States Life Ins. Co.*, 343 Mo. 1232, 124 S. W. (2d) 1157.) The statute in each instance is merely authority to so place and vest the title, if the occasion requires it, as it (Ill. Rev. Stat. 1943, chap. 73, par. 800) requires a decree and finding of the circuit or superior court of insolvency, in which event the law places a title in the liquidator.

So, in this case, the title of appellee to the property and assets of Chicago Lloyds is based upon a judgment. While Missouri would have the power to give priority to Missouri creditors in the property of Chicago Lloyds located in that State, (*Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160,) it has not done so; nor is there any proof there ever were any assets in Missouri at the time appellant obtained a judgment. The Illinois decree appointing a liquidator vested title and possession in him. This was known to appellant, because he filed a claim with the liquidator, in accordance with the Illinois statute. The superior court of Illinois, by a decree finding insolvency, thus had obtained jurisdiction of the res by the law vesting title in liquidator, and such liquidator is entitled to keep and retain such possession to the exclusion of the process of any other court (*Harkin* v. *Brundage*, 276 U. S. 36, 72 L. ed. 457.) There being no Missouri law to the contrary this would likewise apply to the assets in Missouri. (*Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.) Under the law both of Missouri and Illinois it is plain no possession could be had by virtue of a Missouri judgment entered long after a decree finding facts which would vest title in a liquidator. Full faith and credit requires the Missouri creditor claiming rights under a judgment to likewise recognize the bind-

ing effect of the Illinois judgment when he seeks satisfaction from assets in control of Illinois courts.

Considered in the light of a claim what rights does a judgment obtained by appellant carry? We have held under a similar law that a judgment against a corporation, after title to its assets had passed to a liquidator, gave plaintiff no rights. (*Evans* v. *Illinois Surety Co.* 319 Ill. 105.) The Missouri court has reached substantially the same result. (*McDonald* v. *Pacific States Life Ins. Co.*, 343 Mo. 1232, 124 S. W. 2d 1157.) The judgment of another State under the Federal statute enacted by authority of the full-faith-and-credit provisions (28 U.S.C.A., sec. 687) is entitled to the *same* credit that it would have in the State of its rendition. In Missouri, not only the statute, but the construction of the statute, is similar to the law of Illinois, and had a liquidator been decreed in the State of Missouri, appellant either could not have had his judgment or, if he obtained it after the decree of insolvency, could not have enforced it against the property in the hands of the liquidator. He can have no greater rights in Illinois, under his judgment, than he could have in Missouri. (*Adams* v. *Saenger*, 303 U. S. 59, 82 L. ed. 649.) Therefore, to disallow appellant's claim would afford the same effect to his judgment in Illinois that, under the same circumstances, it would have had in Missouri. Under this view the judgment of the superior court was correct.

We again consider the force of appellant's judgment as a claim. He recognized the title of the liquidator and the procedure thereunder, and filed his claim within the time fixed by such officer. The claim had not yet been reduced to judgment. It was a contingent claim. A provision of the Illinois Statute with respect to contingent claims provides that it is entitled to share in the assets of the insolvent insurance company where such claim becomes absolute on or before the last day fixed for the filing of the proof of claim, or the assets of such company show there is a surplus over claims allowed, to be distributed. (Ill. Rev. Stat. 1943, chap. 73, par. 821.) Appellant's contingent claim never became absolute by November 15, 1938. No attempt was made to prove such amount prior to that time. Subsequently, upon default, he obtained judgment

in the St. Louis courts, but that was more than two years after the time had expired for proving claims. Under section 209, subsection (3), (Ill. Rev. Stat. 1943, chap. 73, par. 821,) if there is a surplus over the amount required to pay those who have filed claims, he would be entitled to participation in such surplus. Full faith and credit perhaps would require allowance of the claim as to this, but there is no showing in this case that there is any surplus.

The Title of appellee is acquired under the statutes of Illinois and a decree of one of its courts of general jurisdiction. No authority has been called to our attention which gives a judgment acquired against the insolvent debtor, after its assets have been taken possession of and vested in a liquidator, priority over a judgment or decree which requires the distribution of the assets among those filing claims in pursuance of the law. Under such circumstances it seems logical to hold appellant was bound under the full-faith-and-credit clause to recognize the effect of this Illinois decree, as the courts of Illinois would be required to do had the judgment in Missouri been first made a lien, and since the liquidator appointed by the Illinois court acquired possession first, any rights against such property under the Missouri judgment would be inferior to, and subject to the Illinois judgment and decree.

Aside from the case of a surplus in the hands of the liquidator, we do not see how the cases cited by appellant have any application. All of those cases cited involving receivers are limited in their effect by the fact that a receiver has no authority whatever beyond the jurisdiction of the court which appointed it, and hence have no application to a situation in which the liquidator has acquired title to property which the courts of other states are bound to recognize.

This case comes within the class where the holder of a foreign judgment, who is given no special rights against an insolvent corporation, may not, because of the judgment alone, impose a different method of distribution of its assets than the court administering the insolvent estate. Certainly no decision has been cited by appellant which would give him rights he would not have under like circumstances in the State of Missouri. We find no authority

for the proposition that the full-faith-and-credit clause of the constitution of the United States or the enabling acts thereunder are authority for placing the creditor who has obtained the judgment in a better position in another State than he would be in his own.

Appellant also claims the court improperly allowed the master the sum of five hundred dollars, without proof of the number of days he had devoted to examination of the pleadings. An allowance for testimony taken was granted at the rate fixed by statute. Under the heading of "Fees to be fixed by the court" the master claimed $500 for reading pleadings, testimony, examining briefs and authorities, hearing arguments, preparing findings of fact and law, drawing report, and passing upon objections filed thereto. He did not specify the amount of time he had spent in such work. When objections were made to this item of the master's fees the court heard the testimony of the master in open court, and made a finding that $500 was a reasonable fee for the services performed. No certificate of the evidence given by the master has been preserved.

While it is necessary that the amount of time the master devotes to service of this character be shown (*Litwin* v. *Litwin*, 375 Ill. 90,) it must be presumed the amount of time spent by the master was disclosed to the court, when the decree recites he heard the master's testimony on objections and makes a finding of the reasonable value of the services rendered. In the Litwin case the lump-sum claim of the master was disallowed because he had an opportunity to explain same to the court and did not do so. In the instant case the master did make a satisfactory explanation to the court. If appellant thought the proof was insufficient he should have preserved the evidence, to enable us to pass upon it.

Both parties have argued other questions, which we have considered but do not deem it necessary to decide because the foregoing fully disposes of the merits of the case.

We are of the opinion that the order of the superior court of Cook county in disallowing the claim of appellant,

and fixing the fees of the master, should be, and is in both respects affirmed.

Order affirmed.

(See amendment made of the Court's own motion, on following page.)

The Court, of its own motion, amended its opinion by deleting the following:

On page 3, in the last sentence of the second paragraph on that page, the words—

> "and no attempt made to establish and prove a contingent claim, as provided by section 209, subsection 3, of the Illinois Insurance Code, discussed later in the opinion,"

were deleted. The sentence was changed to read:

> "The only evidence presented by claimant was the record of this judgment, obtained in the Circuit Court of the City of St. Louis."

On page 12 of said opinion, the last paragraph, which read as follows, was deleted.

"We again consider the force of appellant's judgment as a claim. He recognized the title of the liquidator and the procedure thereunder, and filed his claim within the time fixed by such officer. The claim had not yet been reduced to judgment. It was a contingent claim. A provision of the Illinois Statute with respect to contingent claims provides that it is entitled to share in the assets of the insolvent insurance company where such claim becomes absolute on or before the last day fixed for the filing of the proof of claim, or the assets of such company show there is a surplus over claims allowed, to be distributed. (Ill. Rev. Stat. 1943, chap. 73, par. 821.) Appellant's contingent claim never became absolute by November 15, 1938. No attempt was made to prove such amount prior to that time. Subsequently, upon default, he obtained judgment in the St. Louis courts, but that was more than two years after the time had expired for prov-

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